

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
IONA BROWN,

Plaintiff

-against-

J.J.J. DELIVERY LLC, RIVER STREET IDEA LEASE
and JORGE ARACENA-NUNEZ,

Defendants
-----X

Index No.: 303710/07

VERIFIED ANSWER
DEFENDANT DEMANDS
TRIAL BY JURY

Defendant, J.J.J. DELIVERY LLC, RIVER STREET IDEA LEASE i/s/h/a RIVER STREET IDEA LEASE and JORGE ARACENA-NUNEZ, by and through their attorneys, the Law Offices of Patrick J. Maloney, as and for an answer to the complaint of the plaintiff, alleges as follows upon information and belief:

FIRST: Denies each and every allegation contained in Paragraphs "2", "3", "5", "6", "7", "9", "41", "42", "42", "43", "44", "45", "47", "48" and "49" of the Complaint.

SECOND: Denies each and every allegation contained in Paragraph "46" and respectfully refers all questions of law therein to the Court for resolution.

THIRD: Denies knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraphs "1", "4", "8", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "31", "32", "33", "36", "37", "38", "39" and "40" of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

FOURTH: The injuries alleged to have been suffered by plaintiff(s) were caused, in whole or part, by the conduct of plaintiff(s). Plaintiff's claims are barred or diminished in the proportion that such culpable conduct of plaintiff bears to the total culpable conduct causing the damages.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

FIFTH: This Court has not acquired personal jurisdiction over the person of this answering defendant(s).

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

SIXTH: Plaintiff(s) failed to mitigate the damages alleged in the complaint by failure to wear or use seatbelts, shoulder harnesses, or other restraints or protective devices, at the time and place of the alleged incident, and any award made to or accepted by plaintiff(s) must be reduced in such proportion to the extent that the injuries complained of were caused, aggravated or contributed to by plaintiff's failure to use protective devices.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

SEVENTH: Plaintiff(s) are precluded from maintaining this action by Insurance Law Article 51 in that plaintiff(s) have failed to sustain a serious injury or economic loss greater than the basic economic loss as defined by that law.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

EIGHTH: Plaintiff's cause(s) of action is barred by reason of res judicata.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

NINTH: The cause of action may not be maintained because of arbitration and award, collateral estoppel, payment, or res judicata.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

TENTH: That recovery, if any, on the complaint shall be reduced by the amounts paid or reimbursed by collateral sources in accordance with CPLR §4545(c).

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

ELEVENTH: That if it is determined that this answering defendant(s) is responsible for the acts alleged in the complaint then plaintiff(s) failed to take appropriate action to mitigate any damages.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

TWELFTH: The injuries and damages alleged in the complaint were caused or contributed to by plaintiff's culpable conduct in assuming the risk under the conditions and circumstances existing.

WHEREFORE, defendants respectfully request that this Honorable Court dismiss the Complaint of the plaintiff with prejudice and award defendant such other, further or different relief as the Court may deem just and proper, and that plaintiff demands a trial by jury on all issues in this action.

Dated: New York, New York
January 2, 2008

Yours, etc.,

LAW OFFICES OF PATRICK J. MALONEY

By: _____

Mark A. Solomon
Attorneys for Defendants
J.J.J. DELIVERY LLC, RIVER STREET IDEA LEASE
and JORGE ARACENA-NUNEZ
90 Broad Street – Suite 2202
New York, New York 10004
(646) 428-2650

TO: KUHARSKI, LEVITZ & GIOVINAZZO
Attorneys for Plaintiff
IONA BROWN
7 Dey Street - 14th Floor
New York, New York 10007
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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IONA BROWN,

Plaintiff,

**ATTORNEY'S
VERIFICATION**

-against-

J.J.J. DELIVERY LLC, RIVER STREET IDEA LEASE
and JORGE ARACENA-NUNEZ,

Defendants.

-----X


MARK A. SOLOMON, an attorney duly admitted to practice law before the Courts of New York State, hereby affirms under the penalties of perjury pursuant to CPLR 2106:

I am an associate of the firm of the LAW OFFICES OF PATRICK J. MALONEY, attorneys for defendant, J.J.J. DELIVERY LLC, RIVER STREET IDEA LEASE and JORGE ARACENA-NUNEZ.

I submit the following statement upon information and belief, based upon an inspection of the records maintained by this office, which records I believe to be true.

That I have read the contents of the attached Verified Answer and believe it to be true based on information available or maintained by this firm. I make this verification because this defendant is not located in New York County.

Dated: New York, New York
January 2, 2008



MARK A. SOLOMON

AFFIDAVIT OF SERVICE

[illegible]

ROBERTTA GRAHAM, being duly sworn, deposes and says: that deponent is not a party to this action is over 18 years of age and resides in Bronx, New York.

That on the 2nd day of January 2008, deponent served the within **VERIFIED ANSWER** upon:

TO: KUHARSKI, LEVITZ & GIOVINAZZO
Attorneys for Plaintiff
IONA BROWN
7 Dey Street - 14th Floor
New York, New York 10007
(212) 228-1331

at the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in the official depository under the exclusive care and custody of the United States Post Office with the State of New York.


ROBERTTA GRAHAM

Sworn to before me this
2nd day of January 2008

Jana E. Rubinch-Martinez
Notary Public

LAURAE RUBINICH
NOTARY PUBLIC, STATE OF NEW YORK
NO. 015R06118288
QUALIFIED IN NEW YORK COUNTY
CERTIFICATE FILED IN NEW YORK COUNTY
CLERK'S OFFICE
JAN 20 2018

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Plaintiff

-against-

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Defendants
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**VERIFIED ANSWER
DEFENDANT DEMANDS TRIAL BY JURY**

LAW OFFICES OF PATRICK J. MALONEY
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